

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION)	
OF PEMAQUID OYSTER COMPANY, INC)) FINDINGS OF FACT,
FOR AN AQUACULTURE LEASE)	CONCLUSIONS OF LAW
LOCATED IN THE SCHOONER LANDING)) AND DECISION
MARINA, DAMARISCOTTA, LINCOLN,)	
COUNTY MAINE)	

On September 13, 2002, Pemaquid Oyster Company, Inc. of Waldoboro, Maine applied for an aquaculture lease totaling 0.0224 acres in the coastal waters of the State of Maine, located in the Schooner Landing Marina, in Damariscotta, Lincoln County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating eastern oysters (Crassostrea virginica), and hard clams (Mercenaria mercenaria) using suspended culture techniques. The application was accepted as complete on September 16, 2002. The application was revised on November 25, 2002. A public hearing on this application was held on January 30, 2003 at 7:00 p.m. in Damariscotta.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that an aquaculture lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the January 30, 2003 public hearing. At the public hearing, testimony was given by Chris Davis, representing the applicant Pemaquid Oyster Company, and Marcy Nelson, a Marine Resource Specialist and the assistant to the Department's Aquaculture Environmental Coordinator.

According to the application and the testimony by Chris Davis, a partner in Pemaquid Oyster Company, hereafter referred to as the applicant, the proposed aquaculture lease is sought to raise eastern oysters and hard clams. The applicant requests a lease site totaling 0.0224 acres and a lease term of ten (10) years. The applicant testified that the proposed lease boundaries were changed from the original proposal. The applicant expanded the length of the originally proposed lease area from fifty feet to seventy-five feet to allow room for six upwellers. The expanded proposed lease area remains along the finger pier of the marina and does not extend beyond the end of the pier.

The proposed lease activities would consist of growing oysters and clams in a maximum of six floating upwellers located within the Schooner Landing Marina. The upwellers will be tied up to the floating dock. Seed oysters from the Pemaquid Oyster Company hatchery in Bremen, Maine will be placed in the upwellers from May to November of each year and reared up to approximately 10mm in shell height. The applicant testified that it takes a maximum of six weeks for the seed to reach 10 mm. Cleaning and grading of the seed will occur once or twice per week from May through November. Removal of the shellfish will entail emptying out each of the upweller silos onto a grading sieve. The upwellers will be launched and hauled from the water in April and November of each year, respectively.

According to the application, the maximum capacity of shellfish stock for the six upwellers would be approximately ten million shellfish at 500 μ m shell height and 4.5 million shellfish at 10 mm shell height. The proposed lease site would be accessed on foot from the Schooner Landing Marina. Pemaquid Oyster Company keeps a vessel at the marina and makes frequent trips to the marina. The applicant testified that Pemaquid Oyster Company had an experimental lease in the same area for three years, and rents a boat slip in the Schooner Landing Marina for the purpose of operating a shellfish nursery and to keep a boat. A statement by Charles Herrick, owner of Schooner Landing Marina, authorizing the applicant to conduct aquaculture activities within a boat slip of the marina, is included in the application. The applicant further testified that the air blowers used to supply air to the upweller pumps operate very quietly. The blowers for the two upwellers on the experimental lease were located near an outdoor dining area of a restaurant and the applicant did not receive any noise complaints. According to the applicant, an increase from two to six upwellers is not expected to increase the noise level.

According to the application and testimony, Pemaquid Oyster Company is aware that the water at the proposed site is closed to the harvesting of shellfish. However, according to the applicant, because the shellfish grown at the proposed lease site will not be marketed for human consumption, but will be transferred to grow-out sites in other lease areas operated by the applicant for one to two years, there is no public health hazard. The applicant understands that a DMR permit will be required to move the shellfish from the proposed lease site. The applicant testified that he successfully obtained permits for the movement of shellfish from the experimental lease.

In accordance with Department regulations, Chapter 2.10(3), the applicant provided an environmental characterization of the proposed lease area. The applicant performed a SCUBA dive and video survey at the proposed lease site. According to the application, the bottom of the proposed lease site is level and consists of cobble, rocks and silt. The depths are estimated to be 5.5 feet at mean low water (MLW), and 16 feet at mean high water (MHW). The current flow is approximately 30 cm per second and flows in an east/west direction. According to the

applicant, during the dive and video survey he observed oyster shells, two rock crabs, one horseshoe crab carapace, and numerous periwinkles.

According to the applicant, the proposed site is located within a boat slip at the Schooner Landing Marina, and therefore should not interfere with navigation in the Damariscotta River. Other than boaters mooring their vessels in the marina, according to the applicant, there are no known recreational uses of the lease area. The applicant included a letter from the Damariscotta Harbormaster, Paul Bryant, with his application. According to Mr. Bryant, because the proposed lease site is located within the Schooner Landing Marina, he cannot envision any conflicts with navigation, fisheries or recreational activities. The applicant stated that recreational fishing would be allowed at the lease site.

The assistant to the Department's Aquaculture Environmental Coordinator (AEC) conducted site visits at the proposed lease area on October 3, 2002 and October 8, 2002. During one of the site visits, a survey, utilizing an underwater video camera, was performed. The AEC's assistant created a site report summarizing the information obtained during the site visits and she provided testimony regarding the site report at the public hearing. The AEC's assistant acknowledged the change to the proposed lease site in the revised application. She testified that although the revision was submitted after her site review, her analysis of the site is not altered by the revision. She reviewed the revised application and verified the coordinates submitted by the applicant.

According to the report and the AEC's assistant's testimony, the proposed site is located in the Schooner Landing Marina. Depths at the proposed site range from approximately 3.85-5.11 feet at MLW and 17.25-18.51 feet at MHW. The bottom of the lease site is generally flat with rocks and boulders observed throughout. Additionally, much of the bottom was covered in shell-hash and a thin covering of silt.

According to the site report, the proposed lease site consists of water temperatures of approximately 60°F and dissolved oxygen levels ranging from 92.0 and 99.1% saturation. The AEC's assistant testified that the proposed site is located in a high energy area with currents

flowing in a continuous westerly direction. Local flora and fauna at the proposed lease site consists of encrusting bryozoans, a variety of species of sponge, hermit crabs, rock crabs, horseshoe crabs, and occasional unidentified species of juvenile fish. According to the AEC's assistant, the proposed lease activities will not have a negative impact on the local flora and fauna.

According to the AEC's assistant, there are no moorings located in the area of the proposed lease site. The main navigational channel for the Damariscotta River is located approximately 200 feet west of the proposed lease site and the public boat launch is located approximately 100 feet to the east. The AEC's assistant testified that the proposed lease will not interfere with the use of the public boat landing. Additionally, according to the AEC's assistant, the proposed activities are not expected to interfere with navigation or riparian ingress and egress due to its location within the Schooner Landing Marina.

According to the site report, no fishing was observed in the proposed lease area during the site visit. Some recreational fishing for striped bass may occur off the floats at the marina. No commercial fishing is expected in the area. The nearest aquaculture lease site is located approximately 1,965 feet southwest of the proposed lease site. The upwellers do not extend beyond the finger piers to which they are attached, and thus, according to the AEC's assistant, do not interfere with fishing any more than would a boat tied in the same location.

According to the site report, the proposed lease is located in an area classified as prohibited for the harvest of shellfish by the Department's Water Quality Division. A permit from DMR will be required to relay the seed to an open area for grow-out. Also, according to the report, the proposed lease site is not located in an "Essential or Significant Wildlife Habitat" regulated by the Department of Inland Fisheries and Wildlife (IF&W).

The AEC's assistant testified that there were two upwellers in the water during the site visit. She indicated that the Department had received a verbal concern from a member of the public regarding the potential for noise from the proposed expanded aquaculture activities. During the site visit, the AEC's assistant took notice of the noise level. She testified that when

standing next to the air blowers, she heard the vehicle traffic on the bridge over the blowers, and the blowers could not be heard from the deck of the restaurant. The AEC's assistant testified that the Department did not receive any complaints regarding the operation of the experimental lease in the marina.

Findings of Fact

The proposed lease site is located within a boat slip in the Schooner Landing Marina, approximately 200 feet east of the main navigational channel for the Damariscotta River. Access to the proposed lease would be by foot from the marina. There are no moorings located in the area of the proposed lease site. Based on this evidence, I find that the lease will not unreasonably interfere with navigation or the ingress and egress of riparian owners.

No commercial fishing is expected in the area of the proposed lease site. Recreational fishing for striped bass may occur in the lease area. The nearest existing aquaculture lease is located 1,965 feet to the southwest. The area of the proposed lease is classified as prohibited for the harvest of shellfish. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing flora and fauna observed at the proposed site consists of encrusting bryozoans, a variety of species of sponge, rock crabs, hermit crabs, horseshoe crabs, periwinkles and occasional juvenile fish. The current flow is estimated to be 30 cm per second. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

All seed shellfish will be obtained from the Pemaquid Oyster Company hatchery in Bremen, Maine. Based on this evidence, I find that there is an available source of eastern oysters and hard clams.

The proposed lease site is located approximately 100 feet from the Damariscotta public boat ramp. However, the proposed lease site is located within a boat slip and will be accessed on foot from the marina. Based on this evidence, I find that the proposed lease site activities will

not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of eastern oysters and hard clams; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of 0.0224 acres to the applicant from the date of this decision for the purpose of cultivating eastern oysters (Crassostrea virginica) and hard clams (Mercenaria mercenaria) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$5,000 conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) Recreational fishing shall be allowed on the open areas of the lease

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: _____

George D. Lapointe (Commissioner)
Department of Marine Resources